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January 23, 1981

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H. STUART CONNINGHAM
of Rockwell
DOCKETED
FEB 5 1981

The Honorable John F. Grady
United States District Court
219 South Dearborn Street - Rm. 1978
Chicago, Illinois 60604

Re: Bally Manufacturing Corporation
vs. D. Gottlieb & Co., Williams
Electronics, Inc. and Rockwell
International Corporation
Civil Action No. 78 C 2246
Our File No. 37452

Dear Judge Grady:

Counsel for plaintiff apologize for this late submittal to the Court in connection with defendant Rockwell International Corporation's presently pending Motion to Dismiss in the above-referenced lawsuit, especially considering the Court's comments on the large amount of related materials already on file. However, considering the importance of this information and that it is based on a deposition taken after the latest filed paper concerning this matter, counsel for plaintiff felt compelled to bring the information to the Court's attention at this time.

Subsequent to the latest filed paper concerning defendant Rockwell's motion plaintiff took the deposition of one of the affiants, Robert Browning, whose affidavit was submitted by Rockwell in support of its motion. This testimony of one of Rockwell's own employees directly contradicts assertions made by Rockwell concerning its alleged liability for contributory infringement as a result of the sale of

electronic display and control circuitry to defendant D. Gottlieb & Co. Gottlieb is charged with direct infringement of the patent in suit for making and selling pinball machines employing the circuitry obtained from Rockwell. Pertinent portions of this testimony are attached hereto as Exhibit A.

With regard to its liability for contributory infringement, Rockwell has repeatedly mischaracterized the product that it sold to Gottlieb for use in Gottlieb pinball machines as "off-the-shelf hardware" suitable for substantial noninfringing use. In this regard, all of Rockwell's arguments and affidavits discuss what Rockwell calls a "Gottlieb controller". Rockwell asserts that since this controller is similar to a general purpose controller (called Rockwell STC Controller Module), then what it provides to Gottlieb must have substantial noninfringing uses. However, as can be seen from Mr. Browning's testimony, Rockwell did not merely provide the "Gottlieb controller" to Gottlieb, but an entire set of pinball display and control printed circuit boards which were specifically designed to be assembled into and cabled to a Gottlieb pinball machine. It was the entire electronic system for the game. These sets of printed circuit boards include not only a control board (what Rockwell calls the Gottlieb controller), but also a master driver board, a power supply board, and five display boards (See Browning deposition transcript, pages 154 through 158, and Exhibit B, which is a document labeled R1702, that is referred to in Exhibit A and which was produced by Rockwell in this litigation).

Most significantly, and directly contradicting Rockwell's assertions in this regard, is Mr. Browning's testimony that the set of boards that Rockwell sold to Gottlieb "could not be used with a system for something else, such as a washing machine." (See Browning deposition transcript page 156). It is noted that after a recess Mr. Browning revised his testimony concerning this matter and stated that the set of boards could be used for other systems "but it would be totally uneconomical." (See Browning deposition transcript page 158). Regardless of whether they could not in any way be used in other applications or whether their use would be totally uneconomical, most certainly this testimony from Rockwell's own affiant establishes that the entire set of electronics which Rockwell sold to Gottlieb had no substantial noninfringing uses.

With respect to Rockwell's assertion that its circuitry was not a material part of the invention, plaintiff is also submitting herewith as Exhibit C a copy of an instruction manual for a Gottlieb Cleopatra pinball game which

contains the Rockwell control and display boards so that the Court can actually see what Rockwell provided to Gottlieb.

The location of the Rockwell printed circuit boards in the pinball machine is shown on page II (third page of Exhibit C) of the manual with the specific construction of the Rockwell control board shown on pages 49-51 and 55, the Rockwell master driver board on pages 52 and 57, the Rockwell display boards on pages 53 and 54, and the Rockwell power supply board on page 56. The manual also describes how these boards were designed specifically to be cabled to and mounted inside the Gottlieb pinball machine.

These Rockwell boards not only control the lights and sense the switches of the game, but they also actually contained display panels which were assembled into the game for displaying players' scores, match numbers, game credits, and high score to date of the pinball machine. The master driver board also contained a group of switches mounted on the board called "operation adjustables" which are switches (labeled SWM1-SWM3 on the control board shown on page 55 of Cleopatra manual) designed to allow a pinball operator to change various bookkeeping, testing and other features on the pinball game to adapt it to his particular location. (These other features can include, for example, whether the game has 3 or 5 balls per play, or what score is necessary for a free game.)

An examination of this manual unquestionably shows that the control and display boards provided by Rockwell are a material part of the invention of the patent in suit which is directed to a solid-state pinball machine having a certain type of control and display circuitry, and how ludicrous Rockwell's assertion in this regard really is.

Finally, plaintiff would like to point out that although various characterizations have been made to the Court as to the scope of the patent in suit (U.S. Patent No. 4,093,232, issued June 6, 1978), a copy of it has not been submitted to the Court in connection with this motion. Therefore, plaintiff submits herewith as Exhibit D a copy of the patent.

It is further pointed out that the claims of the patent which define the invention, are contained on the last five pages of the patent in columns 14 through 22. An examination of the claims unquestionably shows that the patent is directed to solid-state pinball machines having certain type of

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control and display circuits, and it is the control and display circuits, as pointed out above, which Rockwell makes and sells to Gottlieb for use in the pinball machines which are the subject of this lawsuit.

Respectfully submitted,

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By

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Enclosures

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